IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07/02/2003

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA

WRIT PETITION No. 1998 OF 2003
AND
W.P.M.P..NOS.2484 & 2485 OF 2003

Boman Irani,
S/o. M.B. Irani .. Petitioner

-Vs-

1. The Commissioner,
Corporation of Chennai,
Rippon Building,
Chennai 600 003.

2. The Asst Health Officer,
Corporation of Chennai,
Rippon Building,
Chennai 600 003. .. Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Certiorarified Mandamus as stated therein.

For Petitioner : Mr. Ashok Menon for
M/s. Menon & Goklaney
Associates

For Respondents : Mr. P. Bagyalakshmi

:J U D G M E N T

This writ petition has been taken up for final disposal at the stage of admission, on consent of the counsels appearing for the parties, as counter affidavit has been filed and the matter is required to be disposed of at an early date.

2. The petitioner is carrying on business in premises Old No.847 (New No.848), Mount Road, Anna Salai, as a tenant under one Smt. Surya Bai. In one portion, he is running a tea stall after obtaining licence from the Corporation of Chennai. In other portion, the petitioner is carrying on a beetlenut shop. The petitioner has alleged that certain litigations have been

pending between the petitioner and the landlady in different courts. It is the case of the petitioner that on 14.1.2003 some officials of the respondent Corporation came to the tea shop at about 1.00 P.M. and handedover two notices dated 13.1.2003, one purporting to be under Section 379-A of The Chennai City Municipal Corporation Act, (hereinafter referred to as the Act), whereunder it was indicated that the petitioner was using the premises without a license from the Commissioner as required under Section 279 of the Act as the petitioner was called upon to stop trade within 24 hours of receipt of the notice. The other notice purported to be a show cause notice and it is extracted hereunder :-

. . . SHOW CAUSE NOTICE
Ref:- Notice issued Under Section 279 of
C.C.M.C. Act dt: 3.1.2003.
-:0:-

With reference to the above notice, since you have not complied with the defects mentioned in the notice. Hence, your licence has been revoked by the Commissioner, Corporation of Chennai for the Year 2002-2 003. . . .

It is further asserted that the premises wherein tea stall as well as beetlenut shop were located was locked on 14.1.2003 at about 6.00 P.M. On the basis of these allegations, the petitioner has filed the writ petition for issuing a Writ of Certiorarified Mandamus to quash the communication dated 13.1.2003 revoking the license and further directing the respondents to open the premises at Old No.847 (New No.848), Mount Road, Anna Salai, and to permit the petitioner to continue the tea stall and beetlenut shop.

3. In the counter affidavit filed on behalf of the respondents, it has been indicated that on 3.1.2003 the Divisional Sanitary Inspector and the Assistant Health Officer, Zone-VI visited the premises and found that the petitioner had violated the specific terms and conditions of the trade license issued under Section 279 of the Act and notice No.1595 dated 3.1.2003 invoking Section 279 for rectifying the defects had been issued with a view to keep the premises clean and tidy in the larger interest of the general public. The petitioner had been given 7 days time to rectify the defects.
A copy of such notice has been produced. In the back portion of the notice, conditions violated by the petitioner have been indicated, which are extracted hereunder :-

1. Food handlers Certificate for the workers should be produced.
2. Covered dust bin with polythene bag should be provided.
3. Licence fee for Trash should be paid at RD licence Branch.
4. Conservancy charges paid chalan copy should be produced.

4. In the reply affidavit filed by the petitioner it has been stated that the purported notice issued under Section 279 of the Act was not served on the petitioner or on any of the persons working in the shop. To establish such assertion, the petitioner has produced a copy of the salary register relating to the shop from the month of August, 2002 onwards indicating the names of the employees and also showing their signatures in

token of receipt of their salary. It has been contended that the purported signature on the notice produced by the respondents does not tally with any of the employees indicated in such register.

5. The main contention of the petitioner is to the effect that without serving any prior notice and without complying with the principles of natural justice, the respondents have illegally sealed the premises where the petitioner was carrying on his business. It has been stated that such hasty action has been taken by the respondents at the behest of the landlady, who wanted to evict the petitioner by any means.

6. Learned counsel for the petitioner has also stated that the so called defects pointed out in the notice dated 3.1.2003 were either non-existent or insignificant. He has further stated that even there are some defects, the petitioner would cure those defects within a period of 10 days from the date of re-opening of the shop.

7. Notice dated 13.1.2003, which has already been extracted, purports to be a show cause notice as the heading itself indicates. However, in the body of the notice it has been indicated that the petitioner had not complied with the defects mentioned in the earlier notice dated 3.1.2003. Hence, □ your licence has been revoked by the Commissioner, Corporation of Chennai for the Year 2002-2003□. In the counter affidavit filed on behalf of the respondents though it has been indicated that Notice No.1595 dated 3.1.2003 was issued, there is no specific assertion anywhere that such a notice had been served. Though there is a signature in the backside of the notice, no date has been put under the said signature and the signature does not tally with any of the names or signatures as indicated in the salary register. Hence, it is doubtful as to whether actually such a notice dated 3.1.20 03 had been served on the petitioner or any of his employees.

8. Even assuming that such a notice had been served, the purported notice is to the following effect :-
□ . . . As you are running Tea Stall in the above premises contrary to the conditions of licence issued, under Section 279 of the Chennai City Municipal Corporation Act IV of 1919, you are required to comply with the requirements specified on the reverse within 7 days from the date of receipt of this letter failing which prosecution will be launched against you.

Please also note that under section 379-A of the Act steps will be taken to prevent you from continuing to use this place as such.□

9. The notice indicates that on failure of the noticee to comply with the requirements on the reverse within 7 days, prosecution would be launched. It is further indicated that steps would be taken under Section 379-A to prevent the noticee from continuing to use the place as such. There is nothing indicated anywhere that the respondent No.1 was contemplating to revoke the licence already issued to the petitioner.

10. Section 279(2) empowers the Commissioner to cancel or

suspend any licence if he is of opinion that the premises covered thereby are not kept in conformity with the conditions of such licence or with the provisions of any by-law made under section 349 relating to such premises whether or not the licensee is prosecuted under this Act. Even though this provision does not specifically provide for giving any opportunity, since the question of cancellation of licence is involved and such cancellation would have the effect of depriving a person, his right to carry on business and even the means of his livelihood, it is evident that such power of cancellation has to be exercised after compliance with the principles of natural justice. In the purported notice dated 3.1.2003 it has not been indicated that which condition of the licence had been violated nor regarding any violation of any by-law under Section 349. The notice merely indicates that the person would be prosecuted. As seen from Section 349(2), the question of launching the prosecution for violation is different from the right to cancel. Even without launching a prosecution, licence can be cancelled and where prosecution is launched and a person is penalised, yet the licence need not be cancelled. The power to prosecute and power to cancel are independent of each other. Merely because it was indicated in the notice that prosecution would be launched, it would not put the licensee on notice regarding the proposal to cancel the licence.

11. In the present case, the subsequent notice dated 13.1.2003, which purports to revoke the licence, must be held to be illegal and without jurisdiction since the principles of natural justice had been violated and even the impugned notice dated 13.1.2003 as the heading shows it purports to be a show cause notice. Even otherwise assuming that notice dated 3.1.2003 had been served and it is a valid notice on the basis of which licence had been cancelled, the violated conditions seem to be very insignificant and there was no justification to proceed in such a hot-haste manner.

12. The other notice purports to be under Section 379-A, wherein it has been stated that the person is carrying on business without any licence. Since the cancellation of the licence is found to be illegal and arbitrary, the consequential notice under Section 379-A must be quashed.

13. It is also seen that for carrying on business in beetle nut, no licence was necessary. Even assuming that there was some violation in the conditions of the licence in running the tea stall, there was no justification to prevent the petitioner from carrying on his business in beetle nut for which no licence was required.

14. For the aforesaid reasons, the writ petition is allowed and the two notices/orders dated 3.1.2003 and 13.1.2003 are quashed. Since the premises has been sealed by the respondents, they are directed to open the premises and permit the petitioner to carry on his business. This order may be complied with within a period of three days from the date of receipt of the order. No costs. Consequently, the connected miscellaneous petitions are closed.

Index : Yes
Internet : Yes
dpk

To
1. The Commissioner,
Corporation of Chennai,
Rippon Building,
Chennai 600 003.

2. The Asst Health Officer,
Corporation of Chennai,
Rippon Building,
Chennai 600 003.